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February 28, 2023

By ECF

Honorable Gregory H. Woods
United States District Judge
Southern District of New York
500 Pearl Street, Room 2260
New York, New York 10007

Re: *United States v. Ethan Phelan Melzer*, S1 20 Cr. 314 (GHW)

Dear Judge Woods:

As counsel to Ethan Melzer, we write in response to the Court's order at ECF No. 165 to clarify our position regarding the disputed issues of fact at sentencing. We understand that, in light of the government's representation that it will not seek to prove its position on those disputes, the Court has indicated that it will not consider them at sentencing. Accordingly, we do not intend to submit additional evidence concerning them.

We wish to clarify, however, that we stand by the timeline presented in our sentencing submission—namely, that Ethan Melzer did not begin following O9A until 2019, and so cannot have enlisted in the Army in 2018 as an O9A “insight role”—and intend to continue to rely on that timeline at sentencing.¹

The government now states that “the precise timing of the defendant's allegiance to O9A” is irrelevant to sentencing. ECF No. 164 at 1. But the government's sentencing submission repeatedly focused on the claim that Ethan “*joined* the military in the first place [in 2018] for the purpose of carrying out an insight role and sinister deed for O9A.” ECF No. 159 at 51 (emphasis in original). This “appalling fact,” the government argued, “bears emphasizing” and is

¹ In particular, we respectfully point the Court to the Discord chats included at Exs. J and K to our February 3, 2023 sentencing submission. ECF No. 157. Those chats—whose authenticity is undisputed—establish the defense's contention that Ethan did not begin following O9A until 2019.

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particularly aggravating. *Id.* But this supposedly appalling “fact” is not a fact at all—it is demonstrably untrue.

We understand that only this Court can say which facts will or will not affect sentencing. But our position is that the relatively limited overall duration of Ethan’s commitment to O9A and the fact that he initially enlisted in the military for reasons unrelated to O9A are mitigating facts that bear on his history and characteristics and the nature and circumstances of his offense, among other § 3553(a) sentencing factors. Accordingly, we respectfully inform the Court and the government that we stand by the timeline set forth in our sentencing submission and intend to continue to do so at sentencing.

Respectfully submitted,

/s/ Jonathan Marvinny

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